



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2008-0402; FRL-9811-8]

**Approval and Promulgation of Air Quality Implementation Plans;
Wisconsin; Permit Exemption Rule**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Wisconsin State Implementation Plan (SIP) submitted by the Wisconsin Department of Natural Resources (WDNR) on April 23, 2008. WDNR has submitted for approval revisions that exempt certain sources of air pollution from construction permit requirements. EPA is proposing to approve these revisions because they are consistent with Federal regulations governing state permit programs.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2008-0402, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. Email: damico.genevieve@epa.gov.
3. Fax: (312)385-5501.

4. Mail: Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No.

EPA-R05-OAR-2008-0402. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know

your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I of the SUPPLEMENTARY INFORMATION section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental

Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andrea Morgan, Environmental Engineer, at (312) 353-6058 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andrea Morgan, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6058, morgan.andrea@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Should I Consider as I Prepare My Comments for EPA?

II. What Revisions Did WDNR Submit?

III. Does This Submittal Comply with Federal Regulations?

IV. Do the Revisions Comply with Section 110(1) of the Clean Air Act?

V. What Action Is EPA Taking on This Submittal?

VI. Statutory and Executive Order Reviews.

I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
2. Follow directions - EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What Revisions Did WDNR Submit?

Wisconsin submitted revisions to its rules NR 406 (requirements for construction permits), NR 407 (requirements for operation permits), and NR 410 (requirements for fees) on

April 23, 2008. The submittal requests that EPA approve the following revisions to WDNR's SIP: (1) renumber and create NR 406.02(1) and 406.04(4)(h); (2) create NR 406.04(1)(zh), NR 406.04(1q), NR 406.04(4)(i), NR 407.03(1m), and NR 410.03(1)(f); and (3) amend NR 410.03(1)(d).

In a letter dated March 25, 2013, Wisconsin provided additional information as required by section 110(1) of the Clean Air Act (the Act) to demonstrate that "the revision would not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title [section 171]), or any other applicable requirement of this Act." In this letter WDNR also clarified that the revisions to NR 407.03(1m) are not to be approved into its SIP at this time but will be included in a future title V approval package request.

The revisions submitted will exempt sources of air pollution whose actual emissions are under 10 tons per year (tpy) of each criteria pollutant, particulate matter of 10 micrometers or less (PM_{10}), sulfur dioxide (SO_2), nitrogen oxides (NO_x), carbon monoxide (CO) and volatile organic compounds (VOC), and less than 0.5 tpy of lead, and that are not subject to Federal air pollution requirements for hazardous air pollutants under section 111 or 112 of the Act from the requirement to

obtain a construction permit. The revisions will also exempt construction or modification projects that emit less than 1,666 pounds of criteria pollutants per month, averaged over a 12 consecutive month period, and less than 10 pounds of lead per month, averaged over a 12 consecutive month period from construction permitting requirements.

WDNR submitted the following revisions to NR 406, Wisconsin's construction permit provision. NR 406.02(1) is renumbered to NR 406.02(1m). NR 406.02(1) is created to add a definition for "clean fuel." NR 406.04(1)(zh)1. and 406.04(1)(zh)2. are created to provide for an exemption from construction permit requirements for sources that qualify for the exemption under NR 407.03(1m).

NR 406.04(1q) is created to exempt sources from construction permit requirements if the following criteria are met: (1) The owner or operator has a facility-wide operation permit or has submitted an application for a facility-wide operation permit; (2) actual emissions from the constructed or modified units do not exceed (a) 1,666 pounds per month averaged over 12 months for criteria pollutants, and (b) 10 pounds per month averaged over 12 months for lead; (3) none of the constructed or modified units requires a new Best Available Control Technology or Lowest Achievable Emission Rate

determination under NR 445 (Wisconsin's hazardous air pollutant rules); (4) none of the constructed or modified units are subject to new permitting requirements under NR 405 or 408 (Wisconsin's Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) rules) as a result of the project; (5) the owner or operator submits an application for an operation permit revision, prior to commencing construction and (a) proposes monitoring in accordance with the monitoring requirements in NR 430.055, and (b) commences such monitoring and maintains records to demonstrate compliance with any applicable emission limitation; (6) the owner or operator submits a claim of exemption from construction permitting requirements; and (7) the constructed or modified unit does not trigger an emissions limitation or requirement under sections 111 or 112 of the Act.

NR 406.04(4)(h) is created to exempt changes in the method of operation for process lines emitting VOCs from construction permitting requirements if: (1) the change does not result in annual potential VOC emissions that exceed the currently allowed annual potential VOC emissions; and (2) the change does not trigger a requirement under sections 111 or 112 of the Act.

NR 406.04(4)(i) is created to exempt a change to an external combustion furnace to allow combustion of a clean fuel

from construction permitting requirements if the following three criteria are met: (1) the external combustion furnace has a maximum heat input capacity of 10 million British thermal units per hour (mmBtu/hour) for distillate oil and 25 mmBtu/hr for natural gas or propane; (2) the use of the new fuel does not cause or exacerbate the exceedance of any ambient air quality standard or increment; and (3) the change does not trigger a requirement under section 111 or 112 of the Act.

In the original submission, WDNR requested for provisions in NR 407, which pertain to operation permit requirements, to be approved into the SIP. However, in a letter dated March 25, 2013, WDNR withdrew the NR 407 provisions from the SIP submittal.

NR 410 contains Wisconsin's air permit, emission, and inspection fees. WDNR amended NR 410.03(1)(d) to create subparagraph (f), which requires a fee for each construction permit exemption claim.

WDNR held public hearings on June 27, 28 and 29, 2006, for these proposed revisions. WDNR proposed the rule revisions to the Wisconsin Natural Resources Board for adoption in August 2006, and the Board approved the rule revisions, which were published in the Wisconsin Register on May 31, 2007, and became effective on June 1, 2007.

III. Does This Submittal Comply with Federal Regulations?

EPA has evaluated WDNR's proposed revisions to the Wisconsin SIP in accordance with the Federal requirements governing state permitting programs. The revisions described in section II, above, will exempt certain sources of air pollution from construction permit requirements. As discussed further below, EPA is proposing to approve these revisions because they are consistent with Federal regulations.

Construction permitting requirements, including emissions thresholds for major sources of air pollution, are defined in the Federal PSD program (See 40 CFR 51.166). Wisconsin rule NR 405 contains its PSD program requirements. Permitting requirements for major sources of air pollution in nonattainment areas are defined in the Federal NSR program (See 40 CFR 51.165). Wisconsin rule NR 408 contains its nonattainment area permitting requirements. WDNR's proposed rule changes do not request any revision to NR 405 or NR 408, nor is the permit exemption proposed in this SIP submittal allowed if an emission unit constructed, modified, replaced, relocated, or reconstructed is subject to the requirements of NR 405 or 408, as approved into the SIP at 73 FR 76560 (December 17, 2008), as a result of the project. While the proposed exemption is based on actual emissions, if the potential to emit (PTE) of a project

exceeds the significant net emission increase threshold under NR 405 or NR 408, the project is not eligible for the exemption under NR 406.04(1q)(d). This requirement is included in NR 406.04(1q)(d), which states that NR 406.04(1q) does not provide an exemption from construction permit requirements for a source that is required to obtain a permit under NR 405 or 408.

Facilities and projects that are non-major are governed by the minor NSR permitting program. The Federal requirements for minor source programs are outlined 40 CFR 51.160 through 51.164. In general, the purpose of a permitting authority's minor source program is to attain and maintain the National Ambient Air Quality Standards (NAAQS). The minor NSR program requirements, which are set forth in 40 CFR 51.160, require a state or permitting authority to have a program: (1) to determine "whether construction or modification" of a source will interfere with the SIP or attainment or maintenance of the NAAQS; and, (2) to include procedures to "prevent the construction or modification" of the source if it would interfere with the SIP or attainment or maintenance of the NAAQS. While the PSD program provides certain emissions thresholds for permitting, the minor NSR program does not set forth any such permit applicability thresholds.

Wisconsin's current rules at NR 406 contain two types of exemptions from construction and operation permit requirements. The first type are exemptions which apply to a specific list of processes, emission units, or activities that are excluded from the minor NSR permitting program, and the second type are general exemptions based on emissions applicability thresholds. The exemptions proposed in this SIP revision are emissions applicability thresholds based exemptions and are similar to the general emissions based exemptions in WDNR's existing SIP approved rules.

The August 21, 2006, (71 FR 48696) proposed "Review of New Sources and Modifications in Indian Country" (Tribal Minor NSR Rule), discusses minor NSR permit thresholds. It states, "The Federal regulations for minor source programs are considerably less detailed than the requirements for major sources. As a result, there is a wider variety of programs and requirements for these "non-major" preconstruction activities and there is a great deal of variation among State minor NSR permitting programs." (71 FR 48700).

This rule also states that, "...a number of State programs have established cutoff levels or minor NSR thresholds, below which sources are exempt from their minor NSR rules." (71 FR 48701). The rule further provides, "...there is variation in

State approaches to minor NSR applicability. Some States do not prescribe source applicability thresholds, instead providing a list of emission units and activities that are excluded from minor NSR. Many of the States that do have applicability thresholds also provide a list of excluded emission units and activities." (71 FR 48701).

In the rule, EPA proposes 10 tpy as the minor NSR permitting threshold for CO, NO_x, SO₂, and PM in attainment areas. The rule states that "We consider the proposed thresholds to be representative of such thresholds in State minor NSR programs, and we believe that these limits will be appropriate for use in Indian country." (71 FR 48702). In addition, the rule provides, "Section 110(a)(2)(C) of the Act requires minor NSR programs to assure that the NAAQS are attained and maintained. Applicability thresholds are proper in this context provided that the sources and modifications with emissions below the thresholds are inconsequential to attainment and maintenance of the NAAQS. As discussed further, the minor NSR thresholds that we are proposing today meet this criterion." (71 FR 48701).

WDNR's proposal for a 10 tpy permitting exemption is consistent with EPA's Federal minor NSR program requirements. As discussed in more detail below, in accordance with minor NSR

program requirements, WDNR will have enforceable procedures to prevent construction or modification of a source if it would violate any SIP requirement or interfere with attainment or maintenance of the NAAQS.

WDNR's regulations require that an air dispersion modeling analysis be performed when any construction permit is issued, as well as for the issuance of certain operation permits. The modeling analysis accounts for emissions from the facility, as well as background concentrations and contributions from surrounding sources, to determine whether any NAAQS are exceeded. If a project is exempt from construction permitting requirements, WDNR still requires that any source that has an increase in emissions of a pollutant go through dispersion modeling during the operation permit issuance process. (A modeling analysis is also required during the operation permit review if any modeling parameter has been negatively changed such that there could be an increase.) Therefore, if any exceedance of the NAAQS resulted from the exempt installation or modification of any source, it would be detected during the operation permit review process. In addition, the emissions from any source or project qualifying for these proposed permit exemptions are still accounted for in the ambient concentration when modeling analyses are performed for other permits.

Even if a source qualifies for an exemption from construction permit requirements, nothing in the proposed revisions relieves any source from the requirement to submit its yearly emissions for inclusion in the emissions inventory if it is required to do so. The Air Emissions Management System requires the owner or operator of a source to calculate actual annual emissions for reporting to the inventory. The data in the emissions inventory can also be used to verify that any exemption based on the proposed 10 tpy exemption is being met. In addition, the proposed SIP revision contains criteria which must be met by applicants in order to qualify for the proposed exemptions.

NR 406.04(1q)(6) requires the facility to submit a claim for the exemption to WDNR. WDNR is also required to respond to the construction permit exemption claim submitted.

NR 406.04(1q)(1) and (5) for construction or modification projects requires the source to have an operation permit or have submitted an operation permit application, as well as having submitted an application for the operation permit revision to permit the change.

Furthermore, the proposed exemption from construction permitting does not exempt the source from control technology reviews. In the supplement to its original submittal dated

March 25, 2013, WDNR states that "Control technology reviews will be conducted during the operation permit initial issuance, renewal or revision process as appropriate".

The proposed exemptions under NR 406(1q) and NR 406.04(4)(h) and (i) are not allowed if a requirement under sections 111 or 112 of the Act is triggered. Section 111 contains the New Source Performance Standards, and section 112 contains the National Emissions Standards for Hazardous Air Pollutants.

In addition, Wisconsin Stat. 285.63 contains the criteria for permit approval, and requires that the source will meet all applicable emission limitations, the source will not violate or exacerbate violation of air quality standard or ambient air increment, and the source will not preclude construction or operation of another source. If emissions will exceed the 10 tpy threshold, the facility is required to obtain a construction permit prior to operation above the threshold. Failure to do so is a violation and will result in an appropriate enforcement action.

EPA has determined that WDNR's submitted revisions will comply with Federal permitting program requirements, based on WDNR's proposed emissions thresholds for the exemption, the criteria required for the exemption, the modeling requirements

in WDNR's permitting programs, EPA's approval of similar rules, and the requirements of the minor source program.

IV. Do the Revisions Comply with Section 110(1) of the Clean Air Act?

Section 110(1) of the Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the Act. The revisions to Wisconsin's SIP to exempt certain sources of air pollution from construction permit requirements will not interfere with attainment, reasonable further progress, or any other applicable requirement of the Act.

As described in section III above, EPA believes that the proposed revisions to Wisconsin's SIP meet Federal requirements and will not interfere with attainment or reasonable further progress. Sources exempt from obtaining a construction permit will continue to be subject to all applicable requirements and compliance demonstration methods per Wisconsin's air pollution regulations. Sources that receive a permit exemption will still be required to undergo a control technology review during operation permit initial issuance, renewal, or revision as appropriate. All sources will be required to conduct monitoring

and maintain records sufficient to demonstrate compliance with Wisconsin's regulatory requirements. Additionally, any source required to submit an air emission inventory report of annual actual emissions above thresholds in NR 438, will still be required to submit this report. Furthermore, since an exemption from the requirement to obtain a construction permit does not exempt the facility from meeting the air quality standards and increments, all exempt sources will be included in any analysis of increment consumption at nearby facilities as required in NR 406.07.

V. What Action Is EPA Taking on This Submittal?

EPA is proposing to approve revisions to Wisconsin rules NR 406 and 410, submitted by the State on April 23, 2008. The SIP revisions submitted, described in section II, above, are consistent with Federal regulations governing state permitting programs. See section III, above. EPA is also soliciting comment on this proposed approval.

VI. Statutory and Executive Order Reviews.

Under the Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of

the Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 25, 2013.

Susan Hedman,
Regional Administrator, Region 5.

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